

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**ROSA JIMENEZ,**

**Plaintiff,**

**- against -**

**VERIFIED COMPLAINT  
AND JURY TRIAL DEMAND**

**Index No.**

**Assigned Judge:**

**MARATHON ENTERPRISES, INC.,**

**Defendant.**  
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Plaintiff, Rosa Jimenez, by and through her attorney, Paul N. Cisternino, Esq., as  
and for her complaint, alleges as follows:

**INTRODUCTION**

1. This is an action against the Defendant for the violation of Plaintiff's federally guaranteed constitutional and civil rights and her rights as otherwise guaranteed under law.

2. Plaintiff seeks money and other damages for the wrongful, illegal and unconstitutional acts of the Defendant which violated rights guaranteed to the Plaintiff under various federal and state laws, specifically Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Act of 1972, 42 U.S.C. §2000 *et seq.*, and the New York State Human Rights Law, New York Executive Law §290 *et seq.*

3. Plaintiff alleges herein that she was subjected to discrimination, denied the equal terms, conditions and privileges of employment, and illegally terminated based on her national origin.

### **JURISDICTION AND VENUE**

4. The jurisdiction of this Honorable Court is invoked pursuant to and under 28 U.S.C. §§ 1331, 1343 and 1367.

5. The unlawful acts alleged herein were committed in whole or in part in the Southern District of New York.

### **ADMINISTRATIVE PROCEEDINGS**

6. Plaintiff has satisfied all procedural requirements prior to commencing this action in that she timely filed charges of discrimination with the New York State Division of Human Rights and her complaint was dual filed with the United States Equal Employment Opportunity Commission. Plaintiff received a written dismissal from the Commission and it has been annexed hereto; the instant complaint has been filed within ninety days receipt thereof.

### **PARTIES**

7. Plaintiff is a thirty-six year old female of Dominican national origin who resides in Bronx County.

8. Upon information and belief the Defendant is an “employer” within the meaning of 42 U.S.C. §2000 *et seq* and the New York State Human Rights Law, employing more than 15 individuals, which presently does business within the State of New York.

### **ALLEGATIONS**

9. Plaintiff hereby repeats and realleges each allegation contained in paragraphs “1” through “8” as if fully set forth herein.

10. Plaintiff has been employed by Defendant as a “packer” since April 2001.

11. During her period of employment, Plaintiff has always performed her job duties in a competent and professional manner.

12. On April 17, 2004, Plaintiff was involved in a physical altercation with an employee named Giovanna Sanchez, who is of Peruvian national origin, and who, upon information and belief, had been drinking alcohol at the time of the incident.

13. On April 19, 2004, Plaintiff had a meeting with the Plant Manager, Allan Thoreson; also present were the Union Shop Steward, Edna Byrd, and Ernesto Mercado, who acted as translator.

14. At this meeting, Plaintiff was informed by Mr. Thoreson that *both* her and Ms. Sanchez would be suspended for the altercation.

15. On April 20, 2004, when Plaintiff went to pick up her paycheck, she was arrested by the police.

16. Plaintiff learned that Ms. Sanchez’s husband had reported her to the police.

17. Although charged, upon information and belief, with “harassment” Plaintiff would be exonerated after a trial.

18. On April 21, 2004, Plaintiff was terminated without explanation by Mr. Thoreson.

19. Upon information and belief, Ms. Sanchez was not terminated.

20. Upon information and belief, Plaintiff was terminated unfairly because of her

being of Dominican national origin.

21. At the time Plaintiff was terminated by Defendant, she was making \$10 per hour on a 40-hour workweek.

22. Plaintiff has been unable to find employment since being terminated by the Defendant.

**AS AND FOR A FIRST CAUSE OF ACTION BASED ON NATIONAL  
ORIGIN UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

23. The Plaintiff repeats and realleges each and every allegation contained in paragraphs “1” through “22” as though fully set forth herein.

24. By engaging in the foregoing conduct, Defendant has violated Plaintiff’s rights in that Plaintiff was disparately treated based on her national origin (Dominican).

25. As herein described, the Defendant acted with malice or with reckless disregard for Plaintiff’s rights, proximately causing Plaintiff mental anguish, conscious pain and suffering, emotional distress, and the loss of income and other related benefits, thereby entitling Plaintiff to an award of compensatory and punitive damages and an award of reasonable attorney’s fees.

**AS AND FOR A SECOND CAUSE OF ACTION BASED ON NATIONAL  
ORIGIN UNDER NEW YORK EXECUTIVE LAW §290**

26. The Plaintiff repeats and realleges each and every allegation contained in paragraphs “1” through “25” as though fully set forth herein.

27. By engaging in the foregoing conduct, Defendant has violated Plaintiff’s rights under the State Human Rights Law in that Plaintiff was disparately treated based on her national origin (Dominican).

28. As herein described, the Defendant acted with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff mental anguish, conscious pain and suffering, emotional distress, and the loss of income and other related benefits, thereby entitling Plaintiff to an award of compensatory damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Rosa Jimenez, respectfully requests that this Court assume jurisdiction herein and thereafter:

1. Award Plaintiff appropriate compensatory and punitive damages in an amount to be defined and determined.
2. Award reasonable attorney's fees and the costs of this action.
3. Award such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a jury trial for all claims stated herein.

Dated: White Plains, New York  
August 10, 2005

Law Office of Paul N. Cisternino, P.C.  
*Attorneys for Plaintiff*

By:                     /S/                      
Paul N. Cisternino (PC0317)  
701 Westchester Avenue Suite 308W  
White Plains, New York 10604  
(914) 997-0303

## VERIFICATION

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF WESTCHESTER )

ROSA JIMENEZ, being duly sworn, deposes and says:

I am the Plaintiff herein. I have read the foregoing and know the contents thereof; the same is true of my own knowledge except as to the matters stated on information and belief; as to those matters, I believe the same to be true.

/S/  
ROSA JIMENEZ

Subscribed and sworn to before me this  
8th day of August 2005.

/S/  
Notary Public

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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**ROSA JIMENEZ, Plaintiff**

**SUMMONS IN A CIVIL ACTION**

**v.**

Case Number:

**MARATHON ENTERPRISES, INC., Defendant**

To: (Name and Address of Defendant)

Marathon Enterprises, Inc.  
787 East 138<sup>th</sup> Street  
Bronx, New York 10454

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Paul N. Cisternino, Esq.  
Law Office of Paul N. Cisternino, P.C.  
701 Westchester Avenue, Suite 308W  
White Plains, New York 10604

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must file your answer with the Clerk of this Court within a reasonable period of time after service.

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CLERK

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DATE

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(BY) DEPUTY CLERK